IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4488 OF 2007

The Chief Officer,
Sinner Municipal Council : Petitioner

versus

M/s.Kiran Construction & ors. : Respondents.

None for the Petitioner.
Mr.Sandeep K. Shinde for Respondent Nos.1 to 3
Mr.V.T.Shinde for Respondent No.4.

CORAM : A.P.DESHPANDE, J.

DATED : SEPTEMBER 27, 2007.

P.C.

1. Counsel for the petitioner is absent. Counsel for Respondent Nos.1 to 3 and Respondent No.4 are present. Rule, returnable forthwith. Taken up for final hearing by consent of counsel

for Respondent Nos.1 to 3 and Respondent No.4.

2. Gone through the petition with the assistance of learned counsel for Respondent No.4/Bank and counsel for Respondent Nos.1 to 3.

3. Respondent No.4 - Bank filed a Dispute before the Co-operative Court for recovery of amount of Rs.14,16,089 against the borrower and the guarantor and in the said Dispute the present Petitioner - Chief Officer, Municipal Council, Sinner was impleaded as Opponent No.4. The Dispute has been dismissed against the present petitioner - The Chief Officer by the Co-operative Court. The bank has not filed any appeal against the said judgment and order passed by the Co-operative Court. Aggrieved by the Award passed by the Co-operative Court, the original Opponent Nos.1 to 3 filed an appeal before the Maharashtra State Co-operative Appellate Court and in the said Appeal they filed an application for stay of the order. The Maharashtra State Co-operative Appellate Court, by its order dated 6.2.2007 granted the prayer for stay subject to condition that the Appellant as well as Respondent No.2 (Chief Officer, Sinner

Municipal Council) to deposit a sum of Rs.Five lakhs jointly and severally. The Co-operative Appellate Court has also granted instalments for deposit of the said amount. Aggrieved by the order directing the Petitioner to jointly and severally deposit the sum of Rs.Five lakhs, the Petitioner challenged the said order by filing the present petition

4. Learned counsel appearing for the bank does not dispute that the Co-operative Court has dismissed the dispute against the present petitioner - Chief Officer, Sinner Municipal Council and the bank has not filed any appeal against the Award passed by the Co-operative Court. Thus, there is absolutely no occasion for the Maharashtra State Co-operative Appellate Court to direct the present petitioner to deposit any amount jointly and severally along with the Appellant before the Co-operative Appellate Court.

5. The impugned order appears to have been passed without noting the fact, that the Dispute has been dismissed against the present Petitioner-Respondent No.2, by the Co-operative

Appellate court. Thus the writ petition deserves to be allowed and I proceed to allow the same.

:ORDER:

. The writ petition is allowed. The impugned order dated 6.2.2007 passed by the Maharashtra State Co-operative Appellate Court to the extent it relates to the petitioner (Chief Officer, Municipal Council, Sinner) is quashed and set aside. Rule is made absolute in above terms.

[A.P.DESHPANDE,J]